

PANEL: WHAT IN-HOUSE COUNSEL WANT AND HOW TO GIVE IT TO THEM

Moderator: Michael O'Donnell
Wheeler Trigg Kennedy

LITIGATION MANAGEMENT

PAR FOR THE SUPERCOURSE

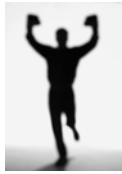
What Does Inside Counsel Want from Outside Counsel?

Mike Baumel CNA Insurance
Craig Zahnd Swiss Re
Mike O'Donnell Wheeler Trigg Kennedy LLP
John Fitzpatrick Wheeler Trigg Kennedy LLP



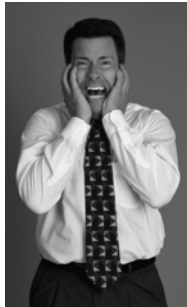
Selecting Outside Counsel

- Clients Hire "Lawyers" Not "Firms"
- Experience is Critical
- Relationships are Key
- Results → Add Value

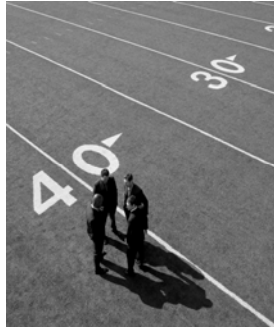


Common Pitfalls

- "Turnstile Approach" – Partner Passes Off Everything to Associates
- "Mystery Lawyer" - Multiple Timekeepers on All Levels, Many that the Client May Not "Know"
- Partner is Disengaged – Doesn't Know the Facts
- Point of Contact Becomes the Senior Associate – Not the Partner Hired
- Failure to Have a Strategy



Address Client
Expectations at
Engagement



Experience Not Fluff

- Preemption / Punitive Damages

"I've read about it – got a DRI brief"

- Federal v. State Court

- Authored Dispositive Motions Like Summary Judgment and.....
Been Successful

- Trial Experience...
Have you Been to Verdict?



"Trial-less Lawyer"
Wall Street Journal
December 1, 2005

right of the basic right to trial by jury" says U.S. District Judge David Blanton of Houston. Since lawyers have long complained about the fact that they rarely see the inside of a courtroom during the course of their daily work. What has changed, as evidenced by Mayer, Brown, Rowe & Maw's arrangement to represent prisoners, is that many law firms are coming up with creative ways to score trial work -- reaching out to judges, government agencies and legal-aid organizations, offering to donate associate time in exchange for referrals of cases that seem particularly likely to go to trial. Typically, once a firm gets such a referral, it handles every aspect of the case.

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public officials in San Washington, D.C. because general public, which would through accessible in trying slip-and-fall cases and traffic violations for the New York City law firm.

The handful of trials that do occur are increasingly handled by boutique firms, which often nab corporate clients from the bigger "white shoe" firms. That is because companies are often more interested in experience than pedigree when they hire trial lawyers. The logic is that opponents will be more inclined to settle than fight when they have to face off against seasoned courtroom attorneys.

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"Trial-less Lawyer"
Wall Street Journal
December 1, 2005

"There are a lot of name-brand firms with big litigation departments, but they never go to trial and are petrified of it," says Paul Gracie, general counsel of Nicor Inc., which uses 55-lawyer Bartlit Beck Herman Palenchar & Scott LLP of Chicago for trial work. "I hire firms that like to go to trial," he adds.

Mr. Gracie says that, starting in the 1970s, many judges came to see their primary role as managing cases — by encouraging parties to negotiate or settle disputes rather than reaching them in trial. But he adds that as "times and never judges began to see 'it's really being the trial as a societal mechanism, most of them now become just prices to pay for settlements."

Meanwhile, at Nicor Energy, two associates have trial cases for settlement, with one victory and one loss, and two more trials are pending. Mr. Kadish, the Nicor Energy partner, says both the firm and the associates have gained from the experience. "In a firm, you commonly tend to have a new generation of lawyers who actually know how to try a case," he says.

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Suggested Questions to Ask

- || What is your Trial Experience?
- || How many cases to verdict have you taken in the last five years?
 - A: Look to ceiling as they search for an answer – NOT GOOD
 - A: "I've tried cases over the years" ... "it's like riding a bicycle" NOT GOOD
 - A: "Most cases settle" – May Be True, BUT..... NOT THE ANSWER YOU WANT
 - A: "I've done mock trials" NOT GOOD
 - A: "I have a good team" NOT GOOD



Taking Your Loved One to a Cardiac Surgeon:

"I've done one or two bypasses – I've read about it"



IS THAT WHAT YOU WANT?

Expectations

- Inspire Confidence in Client and Team
- Take a Stand on Issues
- Not Afraid to Lose (But Mostly Wins) – Not Every Case is 50/50
- Independent Thinker / Good Judgment
 - Advise Client of Major Issues, but Not Day to Day Decision Making
- Appreciates Demands of In-House Counsel – Helps Propose Solutions



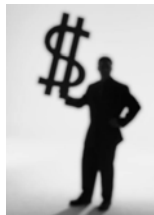
Expectations

- Prepares Case for Trial, Not Settlement
 - Provides Recommendations when Asked
 - Leaves Settlement Negotiations to Client and Focuses on Trial (Difficult to Prepare for Trial if Focused on Settlement)
- Appreciates Best Settlements are Often Achieved when Case is Prepared for Trial and Opposition Knows will be Ready to Go to Court



Legal Fees

- Always Want Best Result for Most "Efficient Value"
- Traditional Hourly Rate vs.
 - Fixed Fee
 - Blended Rates
 - Discounted Rates
 - Greater Volume for Lower Rate
- Percentage of Savings Off Reserve

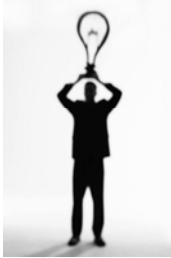


You Get What You Pay For....

How to Make the Client Look Good

- Timely Reporting
- Help Set Appropriate Reserves by Providing
 - Evaluation of Case and Venue
- *Analysis* of Case – Not Just “Paralegal” Summary of Depositions
- Identify Cases Early that Need to be Settled

Not Typical Case Cycle
“Win, Win > 50/50 > Time to Settle”





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Practice Areas

Class Actions
Commercial
Product Liability
Professional Liability
Securities
Toxic Torts

Industries

Asbestos
Automotive
Chemical
Energy
Financial Services
Insurance
Legal Services
Manufacturing
Medical Devices
Pharmaceuticals
Professional Services
Real Estate
Telecommunications

Education

University of Denver, J.D.,
1979

Intern to the Honorable
Sherman Finesilver,
United States District
Court for the District of
Colorado

University of Notre Dame,
B.A., English, 1976

Mike O'Donnell is Chairman of Wheeler Trigg Kennedy. His national litigation practice focuses on complex civil litigation involving product liability, professional liability, toxic tort, class action, securities and commercial matters. He has acted as national or regional counsel for a number of Fortune 500 companies and has appeared as lead counsel in state and federal courts in 25 states. He is a national trial counsel for Boston Scientific, CNA, Guidant, Johnson & Johnson, and Pfizer Inc. He was elected a Fellow of the American College of Trial Lawyers and is listed in Best Lawyers in America. He was voted one of the top 10 lawyers in Colorado by his peers in *Colorado Super Lawyers* 2007.

REPRESENTATIVE CASES & CLIENTS

Moore v. Vancouver Canucks et al. (Colorado)
Ballinger v. Coors Tek (Colorado)
Boston Scientific, National Trial Counsel Team
CNA, National Trial Counsel Team
Crauwels v. A.B. Volvo
Dow Chemical Company, Multi-District Litigation
Guidant, National Trial Counsel Team
Johnson & Johnson, National Trial Counsel Team
Marberry v. Guidant, Class Action (California)
Pengra v. Guidant, Class Action (California)
Pfizer Inc, National Trial Counsel Team
RE/MAX v. Century 21, Multi-District Litigation (Colorado)
Robertson v. Essex (Pennsylvania)
Smith v. Ford Motor Co. (Virginia)
Smith v. Pfizer Inc (Kansas)
Thevenin v. Guidant, Class Action (California)
Travis v. Wal-Mart Stores and Brass Eagle (Colorado)
Vastano v. AT&T Wireless, Class Action (Colorado)
Wankier v. Crown Equipment Corporation (Utah)

ADMITTED TO PRACTICE

Colorado, 1980

Wyoming, 1992

United States District Court
District of Colorado, 1980
District of Wyoming, 1992

United States Court of Appeals
Tenth Circuit, 1980